

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : **CASE NO. 1:11-bk-06938 -MDF**
City of Harrisburg :
: **Purported Debtor** : **CHAPTER 9**
: **The Honorable Mary D. France**

**BRIEF IN SUPPORT OF CREDITOR, COVANTA HARRISBURG INC.'S
OBJECTIONS TO CHAPTER 9 BANKRUPTCY PETITION FILED
BY PURPORTED DEBTOR, CITY OF HARRISBURG, PENNSYLVANIA**

Covanta Harrisburg, Inc, by and through its undersigned counsel, and pursuant to 11 U.S.C. Section 921(c), files this Brief in Support of Creditor Covanta Harrisburg, Inc.'s Objections to the Chapter 9 Bankruptcy Petition filed on October 11, 2011 by Purported Debtor, City of Harrisburg, at the above term and docket number, and in support thereof states as follows.

I. THE CITY'S CHAPTER 9 BANKRUPTCY PETITION FAILS TO MEET THE REQUIREMENTS OF 11 U.S.C. § 921(C) AND SHOULD BE DISMISSED BECAUSE STATE LAW SPECIFICALLY PROHIBITS THE CITY FROM FILING FOR BANKRUPTCY

Section 921(c) of the Bankruptcy Code, 11 U.S.C. Section 921(c), provides that “[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.” 11 U.S.C. § 921(c). The petition filed by the City of Harrisburg is invalid because Harrisburg is not eligible

to be a debtor under the Bankruptcy Code. Section 109(c) of the Bankruptcy Code prescribes the eligibility criteria for becoming a debtor under Chapter 9. To be eligible, an entity must be a municipality which, among other things, “is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter...” 11 U.S.C. §109(c).

Pennsylvania state law prohibits the filing of the bankruptcy petition at issue. Specifically, Act 26 of 2011, 72 P.S. §1601-D.1 (2011), amended the Act of April 9, 1929 (P.L. 343, No. 176) (the “Fiscal Code”) so as to specifically prohibit an financially distressed “city of the third class” – a category of cities which includes Harrisburg – from filing a petition for relief under Chapter 9 of the Bankruptcy Code or any other federal bankruptcy law. Act 26 has amended the Fiscal Code to specifically deny cities of the third class that have been designated as financially distressed under the Financially Distressed Municipalities Act (Act of 1987, P.L. 246, No. 47), including the City, any such authority to file for bankruptcy until July 1, 2012. State law prohibits the City from filing this bankruptcy petition.

II. THE CITY'S CHAPTER 9 BANKRUPTCY PETITION SHOULD BE DISMISSED BECAUSE CITY COUNCIL LACKED AUTHORITY TO FILE IT

Section 1-201.1(d) of the City's Ordinances states that "All proposed bills or resolutions shall be presented to the City Solicitor for approval as to form and legality prior to introduction." However, the Chapter 9 Bankruptcy Petition filed by the City was done solely at the behest of City Council, in direct contravention of the City Solicitor's legal opinion(s) to Council, and in a manner that is contrary to procedures established in the City's Ordinances. (True and correct copies of the applicable City Ordinances 1-201.1 (Legislative Process) and Chapter 2-303 (City Solicitor) containing Sections 2-303.1 through 2-303.3 are attached to Covanta's Objections as **Exhibit "A"** thereto).

III. CONCLUSION

The Chapter 9 Bankruptcy Petition filed by the City fails to disclose the existence or effect of Act 26, and it lacks the required state approval for its filing. City Council also circumvented applicable City Ordinance requirements against the advice of its Solicitor. These actions demonstrate a lack of authority, as well as the absence of good faith, on the part of the City in the filing of the Petition. The Bankruptcy Code, in deference to the Tenth Amendment of the United States Constitution, does not permit this Honorable Court to accept jurisdiction of this

case, where the Petition represents an unlawful and invalid attempt by the City to evade the Commonwealth of Pennsylvania's power as a state sovereign to govern its own political subdivisions.

WHEREFORE, Covanta Harrisburg, Inc. respectfully requests that this Honorable Court dismiss the Chapter 9 Bankruptcy Petition filed by the City of Harrisburg.

Respectfully submitted,

Serratelli, Schiffman, and Brown, P.C.

Date: October 26, 2011

/s/ Paige Macdonald-Matthes

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CERTIFICATE OF SERVICE

I, Paige Macdonald-Matthes, Esquire, of the firm of Serratelli, Schiffman, & Brown, P.C., hereby certify that I this day served a true and correct copy of the Brief in Support Of Creditor, Covanta Harrisburg Inc.'s Objections to Chapter 9 Bankruptcy Petition filed by Purported Debtor, City of Harrisburg, Pennsylvania upon the parties listed below by filing it with the Clerk of the Bankruptcy Court using the CM/ECF system, or by United States Mail, postage prepaid, addressed as follows:

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